

AUG 14 2006

Serial No. 10/664,442

PATENT
New Atty Docket No.: 67267-5018**REMARKS/ARGUMENTS****The Final Rejection**

In the above-mentioned Final Rejection, the objections to claims 2, 4 and 7 were withdrawn and claims 1-7 were rejected as being unpatentable over U.S. Patent 6,540,791 (*Dias*) in view of U.S. Patent 4,857,306 (*Roller*). In response to the Final Rejection, claims 8-12 are added.

Discussion

For the following reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-7 as being unpatentable over *Dias* in view of *Roller*, and the allowance of new claims 8-12.

The Examiner contended that *Dias* teaches all limitations of the claimed invention except a powder comprising a silicon dioxide based poly-element mineral selected from the group consisting of perlite, pitchstone and tourmaline, and that *Dias* suggests the use of metallic dyes and metal chelate dyes in a dyeing composition. The Examiner also contended that *Roller* teaches a composition comprising tourmaline. According to the Examiner, it would have been obvious to one of ordinary skill in the art to modify the compound of *Dias* by incorporating the tourmaline of *Roller* to arrive at the claimed invention because *Dias* suggests the use of metallic and metal dyes in a dyeing composition.

Applicant respectfully submits that this rejection is improper because the alleged suggestion is insufficient to motivate one of ordinary skill in the art to combine the cited references to arrive at the claimed invention. The Examiner merely contended that *Dias* suggests the use of metallic dyes and metal chelate dyes. The Examiner did not contend that *Dias* suggests the use of tourmaline as disclosed by *Roller*. Therefore, the alleged suggestion of using *metallic dyes and metal chelate dyes* is insufficient to motivate one of ordinary skill in the art to use *tourmaline* in the dye of *Dias*.

Applicant respectfully inquires, specifically where in *Dias* or *Roller* is there a suggestion for adding tourmaline to *Dias*? More specifically, where in *Dias* or *Roller* is there a suggestion for adding a tourmaline "powder of about 0.01% to 20.0% of the

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weight of the hair dye" to the hair dye of *Dias*?

As stated in paragraph [0005] of the present specification, Applicant's invention has various advantages over the prior art. The poly-element mineral of the claimed invention improves the effectiveness of the hair dye by increasing the coloring capacity of the dye, by preventing fading after the hair is washed and dried multiple times, decreasing irritation of the scalp after the dye has been applied and by improving the stability of the dye in the hair. The poly-element mineral also enhances the feel of the hair when the dyed hair is brushed. The cited art does not disclose that its dye has those advantages.

It is noted that new claim 8 is broader than claim 1 as the tourmaline option is not included in claim 8. Since there is no suggestion in the prior art for adding a powder of perlite or pitchstone to *Roller* as claimed in claim 8, claim 8 is *a fortiori* patentable.

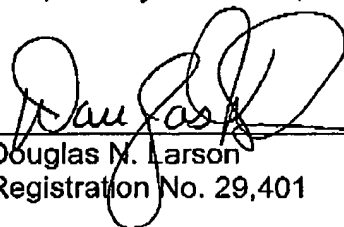
Concluding Remarks

Accordingly, it is respectfully contended that all of the claims are in condition for allowance. Issuance of the Notice of Allowance at an early date is thus in order.

If there are any remaining issues, the Examiner is encouraged to telephone the below-signed counsel for Applicant at (310) 785-5384 to seek to resolve them.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 10-0440. Should such additional fees be associated with an extension of time, Applicant respectfully requests that this paper be considered a petition therefor.

Respectfully submitted,



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